

ORIGINAL

CHEE & MARKHAM

Attorneys At Law

GREGORY K. MARKHAM (3453-0)

KEITH K. KATO (5320-0)

DESIREE HIKIDA MOKUOHAI (7793-0)

1000 American Savings Bank Tower

1001 Bishop Street

Honolulu, Hawaii 96813

Telephone: (808) 523-0111

Facsimile: (808)523-0115

Email: gmarkham@cheemarkham.com

kkato@cheemarkham.com

dmokuohai@cheemarkham.com

Attorneys for Defendant/Limitation Plaintiff

MORNING STAR CRUISES, INC.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 1 1966

at 3 o'clock and 11 min. 2 .M
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

In the Matter of

) CV. NO. 03-00672 SOM-BMK

The Complaint of MORNING STAR)
CRUISES, INC., a Hawaii corporation.)

SHIROH FUKUOKA, Individually and)
as Personal Representative of THE)
ESTATE OF MITSUKO FUKUOKA,)
and as Next Friend of MIHO)
FUKUOKA, a Minor,)

CV. NO. 04-00588 SOM-BMK

[CONSOLIDATED]

Plaintiffs,

VS.

MORNING STAR CRUISES, INC., a
Hawaii corporation; JOHN DOES 1-

) **REPLY MEMORANDUM TO**
) **LIMITATION DEFENDANTS'**
) **MEMORANDUM IN**
) **OPPOSITION TO MOTION TO**
) **DISMISS PLAINTIFFS' CLAIMS**
) **AND FOR ATTORNEY'S FEES**
) **AND COSTS [DATED 7/12/06]**
) **FILED 8/3/06; DECLARATION**
) **OF GREGORY K. MARKHAM;**

| | | |
|-------------------------------|---|-----------------------------------|
| 10, JANE DOES 1-10, DOE |) | OF GREGORY K. MARKHAM; |
| CORPORATIONS 1-10, DOE |) | CERTIFICATE OF SERVICE |
| PARTNERSHIPS 1-10, DOE JOINT |) | |
| VENTURERS 1-10, DOE LIMITED |) | |
| LIABILITY ENTITES 1-10, DOE |) | Date: September 22, 2006 |
| NON-PROFIT ENTITES, 1-10, DOE |) | Time: 2:00 p.m. |
| GOVERNMENTAL ENTITIES 1-10, |) | Judge: Magistrate Barry M. Kurren |
| DOE UNINCORPORATED |) | |
| ENTITIES 1-10, and OTHER DOE |) | Trial: February 21, 2007 |
| ENTITES 1-10, |) | Time: 9:00 a.m. |
| |) | Judge: Hon. Susan Oki Mollway |
| Defendants. |) | |
| |) | |

REPLY MEMORANDUM TO LIMITATION DEFENDANTS'
MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS
PLAINTIFFS' CLAIMS AND FOR ATTORNEY'S FEES AND COSTS
[DATED 7/12/06] FILED 8/3/06

I. INTRODUCTION

Morning Star Cruises, Inc. ("Morning Star"), by and through its attorneys, the law firm of Chee & Markham, hereby replies to Limitation Defendants' Memorandum in Opposition to Morning Star Cruises Inc.'s Motion to Dismiss Plaintiffs' Claims and for Attorneys Fees and Costs [Dated July 12, 2006] Filed August 3, 2006.

II. ARGUMENT

Limitation Defendants' argument that they provided Morning Star with discovery responses and responsive documents on July 12, 2006, the date the Motion to Dismiss was filed, is factually incorrect. While Limitation Defendants

attorney did untimely submit answers to interrogatories on July 12, 2006¹, the responses submitted by Limitation Defendants' counsel were not signed or verified by Limitation Plaintiffs. Morning Star did not receive verified Answers to Interrogatories until August 21, 2006, more than two months after the due date set by this Court's order.

The fact that Limitation Defendants have finally responded to Morning Star's discovery requests does not excuse their failure to comply with the Federal Rules of Civil Procedure and this Court's Order. See Henry v. Gill Industries, Inc., 983 F.2d 943, 947 (9th Cir.1993) (Order of dismissal affirmed: Court "squarely rejected" proposition that failure to comply with discovery requests was "purged" by later compliance.); North Am. Watch Corp. v. Princess Ermine Jewels, 786 F.2d 1447, 1451 (9th Cir.1986) (order of dismissal affirmed: "Belated compliance with discovery orders does nto preclude the imposition of sanction."); G-K Properties v. Redevelopment Agency of San Jose, 577 F.2d 645, 647-48 (9th Cir.1978) (order of dismissal affirmed: "last minute tender" of discovery does not cure effects of discovery misconduct.). Limitation Defendant's

Despite Limitation Defendant's nearly two-and-a-half year delay in responding to Morning Star's discovery requests, Morning Star responded to

¹ This Court granted Morning Star's Motion to Compel Discovery and ordered Limitation Defendants to respond no later than June 15, 2006. See Order Granting Defendant/Limitation Plaintiff's Motion to Compel Discovery, Filed June 6, 2006.

Limitation Defendants discovery requests in less than three months after service, and before receiving Limitation Defendants' verified answers to interrogatories.

III. CONCLUSION

For the foregoing reasons, Defendant/Limitation Plaintiff MORNING STAR CRUISES, INC. respectfully requests that this Court grant its Motion to Dismiss Plaintiff's Claims and for Attorney's Fees and Costs.

DATED: Honolulu, Hawaii, September 11, 2006.



**GREGORY K. MARKHAM
KEITH K. KATO
DESIREE HIKIDA MOKUOHAI**

Attorneys for Defendant/
Limitation Plaintiff
MORNING STAR CRUISES, INC.